

# Sixteen Changes of the upcoming EU General Product Safety Regulation

**EU Law analysis: Cándido García Molyneux, of counsel, Anna Oberschelp de Meneses, associate, and Lucas Falco, associate, at Covington & Burling LLP, consider the upcoming EU General Product Safety Regulation (GPSR) and the key changes it will introduce in relation to the safety of products placed on, or made available in, the EU market and intended for, or likely to be used by, consumers.**

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The European Parliament and Council are about to formally adopt a [General Product Safety Regulation](#), which will repeal and replace [Directive 2001/95/EC](#), the General Product Safety [Directive 2001/95](#) (GPSD). Just like the GPSD, the GPSR sets out the basic rules on the safety of products placed on, or made available in, the EU market and intended for, or likely to be used by, consumers. While the GPSR builds on the existing legal framework of the GPSD, it introduces several changes and new requirements that aim to enhance the protection of consumer's health and safety, and adapt its requirements to new technologies.

This article outlines 16 changes and new requirements that the GPSR introduces and that industry should carefully take into consideration.

## Changes introduced by the GPSR

The GPSR will introduce the following 16 changes:

- takes the form of a Regulation. Unlike the GPSD, the GPSR will take the form of a Regulation that will be directly applicable in all Member States by mid-2024. While we expect that Member States may also adapt some limited legislation to enforce the GPSR, the GPSR will be directly applicable across the EU/EEA and there will be less national variation. As the GPSD, the GPSR will complement other product-specific legislation, such as [Directive 2014/53/EU](#), the Radio Equipment Directive, and surveillance legislation, such as [Regulation \(EU\) 2019/1020](#), the EU Market Surveillance Regulation. It will apply to the extent that its requirements are not already covered by this other legislation. The GPSR also complements or otherwise refers to newer pieces of legislation, such as the EU [Digital Services Act](#) and [Directive \(EU\) 2020/1828](#), the EU Representative Actions Directive
- makes clear that it applies to products offered online or through other means of distance sales targeted at EU consumers and introduces obligations for providers of online marketplaces. Among other requirements, the GPSR requires providers of online marketplaces to:
  - designate a single point of contact for communication with authorities and consumers
  - have internal processes and policies for product safety
  - take into account regular information on dangerous products notified by market surveillance authorities
  - process notices related to product safety issues
  - suspend the provision of services to traders that 'frequently' offer dangerous products on the market places' online interface

- allow traders to provide minimum identification and safety information about the products they offer. Market surveillance authorities will be able to order providers of online marketplaces to remove specific content regarding dangerous products
- only permits that a product be placed on the EU market if there is an economic operator established in the EU responsible for ensuring compliance with certain obligations of the GPSR and the EU Market Surveillance Regulation. The product or its packaging, parcel or accompanying documentation, must depict the economic operator's name, registered trade name (or registered trade mark), and contact details, including its postal and electronic address
- clarifies that it applies to second hand, repaired or reconditioned products under certain conditions. In line with the European Commission's [circular economy action plan](#), the GPSR clarifies that it applies to products that are used, repaired, or reconditioned (eg refurbished or recycled equipment), provided they are not antiques or marketed as to be repaired or reconditioned before use
- repeals and replaces [Directive 87/357/EEC](#), the EU Food Imitation Safety Directive. This Directive prohibited the marketing, import, manufacturing and export of products that are not foodstuff but resemble foodstuff or are likely to be regarded as foodstuff in a way that consumers, in particular children, may place them in their mouth, suck or ingest them—which may lead to, eg suffocation, obstruction of the digestive track or poisoning. These products may include, for example, candles, shower gel, detergents. Under the GPSR, such products will be considered 'dangerous' which means that they may not be placed on, or made available in, the EU market
- introduces a definition of 'risk'. 'Risk' is now defined as 'the combination of the probability of an occurrence of a hazard causing harm and the degree of severity of that harm'. The definition of 'serious risk' remains largely the same as under the Directive, ie a risk that is considered to require rapid intervention by the market surveillance authorities, including cases where the effects of the risk are 'not immediate'. However, the GPSR clarifies that when assessing whether a risk is 'serious' one must take into account the normal and foreseeable use of the product. Importantly, the GPSR now also considers that the safety of products must also be addressed taking into consideration environmental risk as such a risk could also affect consumer health and safety. This type of risk is not explicitly included in the GPSD
- applies to new technologies and lists new aspects that should be taken into account when assessing the safety of a product in light of these new technologies and risks. The GPSR will apply to new technologies, such as interconnected products, ie items connected to other items that influence the way these other items work. Notably, it requires taking into account the following new safety aspects:
  - the effects that interconnected products can have on each other
  - the presentation of the product, the labelling (including regarding age suitability), any warnings and instructions for its safe use and disposal
  - whether a product although not designed or intended for children is likely to be used by them
  - the cybersecurity feature necessary to protect the product
  - the evolving, learning and predictive functionalities of a product (eg artificial intelligence systems)
- requires manufacturers to carry out an internal risk assessment of their products and, based on this assessment, draft internal policies and technical documentation containing the necessary information to prove the product's safety. These must be conducted and drafted before placing products on the market of the EU/EEA. The GPSR also requires

that products bear a type, batch, serial number or other element allowing their identification. The Commission may set up a traceability system for products, categories or groups of products susceptible to bear a 'serious risk' to the health and safety of consumers, based on registered accidents

- establishes that natural or legal persons (other than the manufacturer) that substantially modify a product will be considered 'manufacturers' and subject to the GPSR's obligations as such. A change is considered 'substantial' if it has an impact on the safety of the product and meets the criteria set out in the GPSR. The GPSR specifically refers to software updates and warns that these updates may substantially change the original products and impact its safety
- requires that manufacturers and online marketplaces immediately notify consumers and market surveillance authorities of product recalls and safety warnings. They must notify those consumers whose contact details they have 'directly', while other consumers may be informed through a public-facing communication (eg published on the company's online interface). The Commission may require certain manufacturers and online marketplaces to provide consumers the possibility to register a product they have purchased in order to be notified directly in case of a product safety recall or safety warning
- requires that manufacturers notify competent authorities and consumers about accidents. Manufacturers and providers of online marketplaces are now also required to notify consumers and competent authorities of accidents caused by products they placed on the EU/EEA market via the online Safety Business Gateway
- requires that manufacturers make available communication channels for consumer complaints. Manufacturers must investigate these complaints and information, and keep an internal register of those complaints, product recalls and corrective measures
- introduces more specific rules on what information manufacturers must provide to consumers. For example, the GPSR requires informing consumers of the manufacturers' postal and electronic address, and, where different, the postal or electronic address of the single contact point (which is required for online marketplaces). Moreover, it introduces specific minimum information requirements for products sold online or through other means of distance sales
- introduces specific requirements on the form and content of product recall notices. The Commission will adopt a template recall notice via an Implementing Act. In addition, economic operators and online marketplaces that have a product registration system of customer loyalty program enabling the identification of purchased products must allow customers to provide separate contact details only for product recall notices and safety warnings
- requires that manufacturers offer consumers an effective, cost-free and timely remedy in case of a product recall. At the minimum, consumers will have the choice between two of the following remedies:
  - repair
  - replacement with a product of the same type and at least the same value and quality
  - 'adequate' refund of the value at least equal to the price paid for the recalled product

These rights complement those consumers have under [Directive 2019/770](#), the Sales of Goods Directive and [Directive 2019/770](#), the Digital Content and Digital Services Directive

- introduces waste disposal requirements. The GPSR clarifies that disposal of waste products after a product recall must be made in compliance with the sustainable and environmental objectives established by EU and national legislation. This means, for example, that waste electrical and electronic equipment (eg waste electronic displays or mobile phones) will have to be disposed of in compliance with the provisions of Directive 2012/19/EU, the Waste Electrical and Electronic Equipment Directive, as implemented in the EU Member States

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